

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte INDRAJIT PATEL, HAROLD BOWERMAN,
LARRY ROSENBAUM, RICH MENNENOH
and PAT RYAN

Appeal No. 1996-3582
Application 07/828,083

ON BRIEF

Before CAROFF, KIMLIN and WARREN, Administrative Patent
Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This decision on appeal relates to the final rejection of
claims 1-13. Claims 14-15, all the other claims remaining in
appellants' application, stand withdrawn from consideration as
being drawn to non-elected inventions and, thus, are not

Appeal No. 1996-3582
Application No. 07/828,083

before us.

Appeal No. 1996-3582
Application No. 07/828,083

The claims on appeal are directed to multi-layered medical grade tubing including two layers which are each composed of particular polymer blends which do not include PVC or DEHP. According to appellants' specification, the claimed product possesses essential characteristics required for use as medical grade tubing while not having disadvantages associated with use of DEHP-plasticized PVC tubing. Claim 1, the sole independent claim, is illustrative of the subject matter on appeal:

1. A medical grade tubing comprising a multilayer coextruded structure that does not include PVC or DEHP including a layer comprising a blend of polyurethane and polyester, a tie layer and at least a layer comprising a blend chosen from the group consisting of: polypropylene, ethylenevinyl acetate, and polyurethane; polypropylene and styrene-ethylene-butylene-styrene; polypropylene, styrene-ethylene-butylene-styrene, and ethylenevinyl acetate; polypropylene, ethylenevinyl acetate, styrene-ethylene-butylene-styrene, and thermoplastic polyester elastomer; polypropylene, ethylenevinyl acetate, styrene-ethylene-butylene-styrene, thermoplastic polyester elastomer, and polyurethane; polyester, thermoplastic polyester elastomer, and polyurethane; polyurethane and polyester; and polypropylene, styrene-ethylene-butylene-styrene, and polyurethane.

The sole reference relied upon by the examiner under

Appeal No. 1996-3582
Application No. 07/828,083

35 U.S.C. § 103 is:

Morishita
1990
(Japan)

02-283346

Nov. 20

Appeal No. 1996-3582
Application No. 07/828,083

The following rejections are before us:

I. Claims 1-13 stand rejected for obviousness under 35 U.S.C. § 103 in view of Morishita.

II. Claims 1-13 stand rejected under 35 U.S.C. § 112, paragraph 2, for indefiniteness¹.

We first consider the rejection under 35 U.S.C. § 103. Based on the record before us, we agree with appellants essentially for the reasons presented in their Brief and Reply Brief that the examiner has failed to establish a prima facie case of obviousness. Accordingly, we shall reverse the subject rejection.

We are of the view that appellants have correctly pointed out the limitations of the Morishita disclosure. As adequately explained by appellants, there is no suggestion in Morishita to do what appellants have done, namely to construct multilayer medical grade tubing with two layers composed of specific polymer blends, and which does not include PVC or DEHP in its layered structure. In this regard, we recognize that some of the Morishita examples (Figures 4 and 8) may

¹The 35 U.S.C. § 112 rejection was applied as a new ground of rejection in the examiner's Answer.

Appeal No. 1996-3582
Application No. 07/828,083

suggest a multi-layer tubular structure in which more than one layer may be composed of a blend of different polymers.

However, in those particular instances PVC is used as one of the polymeric components; whereas PVC is explicitly excluded by appellants' claims. We find no teaching or suggestion in Morishita that some other polymer be used in place of the PVC component in those examples. While the examiner refers to a list of other polymers at page 8, paragraph 2, of the Morishita English translation, we agree with appellants that the list simply identifies alternative first materials and second materials, i.e. alternatives to polyester as "the first material" of an inner layer and to polyurethane as "the second material" of an outer layer. On its face, the cited paragraph does not refer to polymer blends nor suggest that some other polymer be used in place of the PVC of Figures 4 and 8.

As for the 35 U.S.C. § 112 rejection, we note that appellants submitted an amendment on May 26, 1995 (Paper No. 17) to delete the offending repetitious portion of claim 1. The amendment has been entered. Accordingly, it would appear that the subject rejection has been obviated by the amendment. Therefore, the rejection is reversed.

Appeal No. 1996-3582
Application No. 07/828,083

Appeal No. 1996-3582
Application No. 07/828,083

For the foregoing reasons, the decision of the examiner
is reversed.

REVERSED

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MARC L. CAROFF)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
EDWARD C. KIMLIN)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

MLC:hh

Appeal No. 1996-3582
Application No. 07/828,083

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